

1      **Carlos L. Juárez, Esq.**  
2      **Law Office of Carlos L. Juarez**  
3      **P.O. Box 2464**  
4      **Riverside, CA 92516**  
5      **Phone: (951) 742-7354**  
6      **Fax: (951) 742-7358**  
7      **E-Mail: [juarezlaw52@yahoo.com](mailto:juarezlaw52@yahoo.com)**

**SBN 86196**

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9      Attorney for Defendant,  
10     JOSE MANUEL PEREZ

11         **UNITED STATES DISTRICT COURT**  
12         **CENTRAL DISTRICT OF CALIFORNIA**

13         **UNITED STATES OF AMERICA,**

14             Plaintiff,

15             vs.

16         **JOSE MANUEL PEREZ**

17             Defendant,

18             } Case No.: 2:22-CR-00597-RGK-1

19             } **DEFENDANT JOSE MANUEL**  
20             } **PEREZ' POSITION RE:**  
21             } **SENTENCING FACTORS**

22             } **DATE: NOVEMBER 27, 2023**

23             } **TIME: 10:00 A.M.**

24             } **ESTIMATED TIME: 30 MINUTES**

25                 Defendant Jose Manuel Perez, through undersigned counsel, herewith  
26                 submits his position regarding sentencing.

27                 **Dated: November 13, 2023**

28                 **LAW OFFICES OF CARLOS L. JUAREZ**  
29                 **By/s/ Carlos L. Juarez**  
30                 Carlos L. Juarez  
31                 Attorney for Defendant  
32                 JOSE MANUEL PEREZ

## 1 INTRODUCTION

2 During the prosecution of Jose Manuel Perez in United States District  
3 Court Docket No. 2:22-CR-00057-1, Perez's phone was seized, which revealed  
4 "selfie" photographs and videos showing him holding or possessing firearms.

5 Between on or about August 12, 2021, and December 25, 2021, in Ventura  
6 County, and elsewhere, Perez was found to possess a Smith & Wesson, model 39-  
7 2, 9mm caliber pistol, bearing serial number A125879 (Smith & Wesson).

8 Between on or about January 25, 2022, and February 12, 2022, in Ventura  
9 County, Perez possessed a Kimber, model Stainless II, .45 automatic caliber  
10 pistol, bearing serial number k599405. On or about February 12, 2022, in  
11 Ventura County, Perez possessed a Springfield Armory, model XD-9, 9mm Luger  
12 caliber, semi-automatic pistol, bearing serial number US887870, and a  
13 Springfield Armory brand magazine capable of accepting more than 15 rounds of  
14 ammunition.

15 At the time Perez possessed each of the firearms, he knew he had been  
16 previously convicted of at least one of the following felony crimes, each  
17 punishable by a term of imprisonment exceeding one year:

18 i) One count of street terrorism and two counts of assault with a deadly  
19 weapon in Ventura Superior Court Case No. 2011032647 on July 11, 2012, for  
20 which Perez was resentenced on October 21, 2019.

21 He was arrested on January 17, 2023, and has been detained since that  
22 date.

1       **A. The Charges Against Perez**

2       On February 14, 2023, a First Superseding Indictment was filed charging a  
3 violation of 18 U.S.C. 922 (g)(1): Felon in Possession of Firearm.  
4

5       **B. The Plea Agreement**

6       There is no plea agreement in this case.  
7

8       **C. The Pre-Sentence Report (PSR) and Recommendation Letter**

9       The PSR was disclosed on August 28, 2023, and determined the base  
10 offense level to be 22 under USSG 2K2.1(a)(3). Pursuant to USSG 2K2.1(b)(1)(A),  
11 a two-level increase applies as the offense involved three firearms. Further, under  
12 USSG 2K2.1(b)(6)(A), a four-level increase applies if Perez possessed any firearm  
13 or ammunition while leaving or attempting to leave the United States or had  
14 reason to believe that it would be transported out of the United States. The  
15 adjusted offense level was 28 with an additional two-level reduction for  
16 acceptance of responsibility. Thus, the total offense level was computed at 26.  
17  
18

19       The PSR then computed 8 total criminal history points, resulting in a  
20 criminal history category of IV. Thus, the advisory guideline sentence is 92 to 115  
21 months incarceration. The Probation Department did not submit a specific  
22 sentence recommendation.  
23

24       **D. The Government's Position**

25       To date, the Government has yet to file their position with the Court.  
26  
27  
28

1        **E. The Defendant's Position**

2        Perez asks for a reasonable and just sentence of 41 months incarceration,  
3 which reflects a total offense level of 20 and criminal history category of III, as  
4 well as consideration for the 500-hour Residential Drug Abuse Program (RDAP).  
5 The defendant does not seek to downplay his involvement in this offense, submits  
6 the following objections, readily accepts responsibility for his behavior, and asks  
7 for consideration on the following issues.  
8

9

10        **The Base Offense Level under USSG 2k2.1 is 20.**

11        The PSR determined the base offense level to be 22. The defendant submits  
12 that a more appropriate base offense level is 20 as (A) the defendant committed  
13 any part of the instant offense subsequent to sustaining one felony conviction of  
14 either a crime of violence or a controlled substance offense; or  
15 (B) the (i) offense involved a (I) semiautomatic firearm that is capable of  
16 accepting a large capacity magazine; or (II) firearm that is described in 26 USC  
17 5845 (a); and (ii) defendant (I) was a prohibited person at the time the defendant  
18 committed the instant offense; (II) is convicted under 18 USC 922 (d); or (III) is  
19 convicted under 18 USC 922 (a)(6) or 924(a)(1)(A) and committed the offense  
20 with knowledge, intent, or reason to believe that the offense would result in the  
21 transfer of a firearm or ammunition to a prohibited person.  
22

23        In Perez's case, the Probation Department did not distinguish why they  
24 elected for a 22 instead of 20 base offense level. It appears a base offense level of  
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1 20 is more appropriate in this case and Perez respectfully requests this level  
2 designation.  
3

4 **4 level increase under USSG 2K2.1(b)(6)(A) is improper.**

5 The evidence in this case are videos and photographs foolishly taken by the  
6 defendant. These photos were obtained from Perez's phone during his  
7 prosecution on a separate case. Perez's phone was seized, which revealed "selfie"  
8 photographs and videos showing him holding or possessing firearms. There were  
9 no weapons seized and no clear indication the firearms were transported out of  
10 the United States to Tijuana, Mexico as argued. Therefore, the 4-level increase is  
11 12 inapplicable.  
13

14 In sum, the total offense level should be 20, not 26 as submitted by the  
15 Probation Department. This would reflect the base offense level of 20, an  
16 additional two-level increase for the three firearms under USSG 2k2.1(b)(1)(A),  
17 and two-level reduction for acceptance of responsibility.  
18

19 **Overstatement of Criminal History: Perez is a Level III offender.**

20 Perez has had some serious run ins with the law in his young life, he does  
21 not downplay the foolish mistakes that have plagued him. However, his criminal  
22 history appears to be overstated and he submits the following objections to the  
23 PSR.  
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1                   **Objection to 2-point designation in Ventura County Docket No.**  
2                   **2013020869**

3                   Paragraph 45 of the PSR details a resisting arrest case involving Perez from  
4                   2013, when he was 21 years old. It was a misdemeanor case involving resisting  
5                   arrest. Perez objects to the 2-point designation to his criminal history.

6                   Objection to 2-point designation in Ventura County Docket No. 2018038101

7                   Paragraph 46 of the PSR details a DUI conviction involving Perez. This is a  
8                   misdemeanor offense and he respectfully asks the Court for adequate  
9                   consideration, objecting to the 2-point designation.

10                  Perez's criminal history tally should be 4, which would place him in  
11                  Criminal History Category III. In sum, Perez's criminal history category is  
12                  overstated as some of these offenses are misdemeanors, petty and happened  
13                  several years ago. He asks the Court to see through the point tally and recognize  
14                  he was and is under the influence and grasp of drug addiction which skewed his  
15                  perception and judgement for many years. Special consideration should be given  
16                  to Perez in this regard. The advisory guideline sentence should be 41-51 months  
17                  incarceration and Perez asks for a low-end sentence of 41 months.

18                  **F. The Nature of the Offense**

19                  The facts of the case are well known to this Court and addressed in the  
20                  Introduction to this sentencing position. In sum, during his prosecution in a  
21                  separate matter, Perez's phone was found to implicating selfie photos and videos  
22                  showing him with firearms.

1           **G. The History and Characteristics of the Defendant**

2           Perez's upbringing and personal history are not unfamiliar to the Courts.  
3  
4           He is a young man who grew up poor in government public housing and was  
5           raised by his grandmother. He maintained a close familial relationship with his  
6           siblings growing up and dropped out of high school in his early teens. While he  
7           reported growing up in a loving family and having the basic needs and  
8           necessities, it appears the lack of discipline and positive influence caught up to  
9           him in his early years. He ran into trouble at a young age and the lure of the  
10           streets greatly influenced him.

11  
12           His youth was peppered with substance abuse issues and minor run ins  
13           with the law. Perez would be a great candidate for RDAP as it appears he has had  
14           significant issues with alcohol and other illicit substances. He has also  
15           experienced some medical issues that have not been resolved and has lingering  
16           issues with potential blood vessels which have resulted in several MRI's which  
17           have yet to identify the problem. There were also issues regarding mental and  
18           emotional health ailments as Perez was diagnosed with ADHD at the age of 10.  
19  
20           He remains unmedicated now but has used illegal drugs in the past to self-  
21           medicate. This obviously has created significant issues for him in adulthood and  
22           he finds himself facing these serious consequences.

23  
24           Further, Perez is the father to five children; four biological and one  
25           stepchild. His unwavering love and adoration for his children has greatly  
26           impacted them, even in his absence. "My name is Mateo Martinez; I am seven

1 years old and Jose Manuel Perez is my stepdad. He is kind because he helps me  
2 when I get hurt. He takes good care of me and I love my stepdad.” **(Attachment**  
3 **“A”: Letter from Mateo Martinez)** He understands that he is failing them  
4 and looks forward to making amends upon release. He has strong family support  
5 and is confident he will become a contributing member of society upon release.  
6 His family speaks highly of him and vows their unwavering support. “My  
7 grandson is a good father, he always carries his children, he teaches them to be  
8 respectful, kind, and they always greet him. He is a great man who likes to help  
9 others, always ready to learn and still smile.” **(Attachment “B”: Letter from**  
10 **Ma De Jesus Orozco Pantoja)** To this day, he remains in contact with his  
11 children and is staying strong for them with the promise of being able to  
12 physically reunite with them upon release. Perez is a family man who cherishes  
13 his small family and values his role as a father.

14 **H. Needs of Society**

15 The goals of sentencing serve to meet societal needs in the aspects of  
16 punishment and deterrence. Perez has been extremely forthcoming and honest  
17 about his role in this offense. He understands and recognizes he has a serious  
18 drug problem that has led him to make ill-conceived decisions that have cost him  
19 his freedom and for now, personal contact with his children. His conduct is  
20 regretful and the needs of society will be met with the sentence requested. He has  
21 grown spiritually and is eager to move on from this incident and specifically, is  
22 eager to receive treatment under the RDAP program.

1        **I. Just Punishment**

2            The punishment Perez receives in this case will be just, he regretfully  
3            understands he put himself in this situation and is extremely apologetic to the  
4            Court. Perez has compartmentalized this phase in his life and is looking forward  
5            to receiving treatment for his addictions and spending his incarceration looking  
6            for ways to better himself. He is open to any and all opportunities afforded to him  
7            while in BOP custody and care.

8        **J. Respect For The Law**

9            Perez has had difficulties showing self-respect and restraint over the years.  
10           He accepts this much while being incarcerated. Since this arrest and period of  
11           incarceration, he has grown and matured tremendously as a person and a father.  
12           He is regretful for his poor decisions and looks forward to making amends with  
13           his family and community. His family misses him very much and they are forced  
14           to fend for themselves without their support. “I have had the pleasure to know  
15           Jose Manuel Perez for five years. During this time, we have grown a friendship  
16           which has led to our engagement. Without a doubt Jose is a loving gentle man  
17           who put others needs before his own. A hardworking father who shows up no  
18           matter how sleep deprived he is; he will make sure you know you are important.  
19           We miss him dearly.” **(Attachment “C”: Letter from Alejandra Martinez)**  
20           A correlation exists between criminality, drug use, and lack of education and  
21           vocational training and experience. Perez is confident that once he is able to  
22           overcome his addiction, everything else will fall into place. He is an extremely  
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1 remorseful and personable young man and is committed to bettering himself  
2 while incarcerated.  
3

4 As noted in the PSR, his substance abuse issues are significant. (PSR,  
5 Paragraphs 75-80) He has abused alcohol, cocaine, and methamphetamine  
6 during his life. He is open and ready for treatment. In fact, Perez attributes his  
7 criminal history to his prior substance use. He is interested and hopeful he can  
8 receive treatment.  
9

10 **K. Adequate Deterrence**

11 Perez has learned from his mistakes, the lifestyle he was living has taken its  
12 toll on him and he is eager to start anew. He is employable and has shown  
13 consistency and success in the workplace when he is clean. As noted in the PSR,  
14 Employment Record, Perez usual occupation is painter. He has verifiable  
15 employment at Edison Plant, where he supervised others, as well as job  
16 experience as a commercial painter in Missouri. Perez further indicates he would  
17 like to continue with commercial reptile sales in the future upon release.  
18

19 Strong family support should factor into his rehabilitation, he has grown  
20 and matured tremendously during this period of incarceration. "I am the mother  
21 of Jose Manuel Perez. He is a good person and always available to help people.  
22 Jose contributes a lot to the family with the support and help he provides. He is  
23 well known in the community for the love he has for animals. He is a person who  
24 is kind and likes to see everyone improve. He loves to live with his children and  
25 nephews and teach them about animals. The children miss him a lot,  
26  
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1 economically they need his support. Thank you for their consideration."

2 **(Attachment "D": Letter from Laura Pantoja)**

3  
4 He is employable, social, and personable which will weigh heavily in his  
5 favor upon release. This will deter future conduct and should Perez receive  
6 services like mental health, drug rehabilitation or vocational training while  
7 incarcerated, his likelihood for success will increase.

8  
9 **CONCLUSION**

10 For these reasons, Perez asks for a reasonable and just sentence of 41  
11 months incarceration and RDAP consideration.

12  
13  
14 Respectfully submitted,

15  
16 Dated: November 13, 2023

17 LAW OFFICES OF CARLOS L. JUAREZ  
18 By/s/ Carlos L. Juarez  
19 Carlos L. Juarez  
20 Attorney for Defendant  
21 JOSE MANUEL PEREZ  
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## **ATTACHMENT "A": LETTER OF SUPPORT FROM MATEO MARTINEZ**

Dear Judge R. Gary Klausner,

Hello, my name is Mateo Martinez aka Kobe, I am seven years old. Jose Manuel Perez is my stepdad. My step dad taught me how to climb, how to love animals and to know many important things about them. He is kind because he helps me when I get hurt. My stepdad Jose Manuel would take me and my brothers to the park, my favorite sport to play is basketball with him. He tries his best to go to all my school stuff like the first day, graduation. He also taught me how not to be afraid of animals and the dark. I love him because he does a lot of nice things for me. What I also love about him is that we have movie nights with my brothers. He takes care of me and I love my stepdad. Thank you.

Sincerely,

Mateo Martinez  
Mateo Martinez

**ATTACHMENT "B": LETTER OF SUPPORT FROM  
MA DE JESUS OROZCO PANTOJA**

Dear Judge R. Gary Klausner,

My name is Ma De Jesus Orozco Pantoja, and I am Jose Manuel Perez's grandmother. My grandson has a very big heart, he is very kind and respectful. My grandson cares a lot about me and others, he comes to visit me daily, making sure that I am well and I don't feel alone and much more since his grandfather passed away, may he rest in peace. He makes the time to take me to the doctor, pick up my meds. Jose Manuel not only helps me, he is happy to help others; if he has a last dollar he prefers to give it to someone in need. My grandson is a good father, he always carries his children, he teaches them to be respectful, kind, and they always greet him. Jose Manuel is a great man who likes to help others, always ready to learn and still smile. Thank you very much for your time, Mr. Judge.

Sincerely,

A handwritten signature in black ink, appearing to read "Ma de Jesus Orozco Pantoja". The signature is fluid and cursive, with "Ma de" on the first line, "Jesus Orozco" on the second line, and "Pantoja" on the third line.

Ma De Jesus Orozco Pantoja

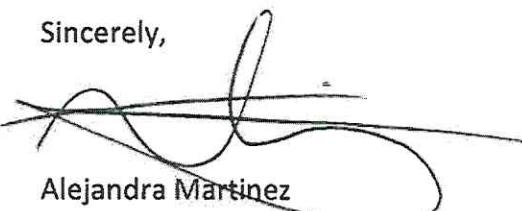
**ATTACHMENT "C": LETTER OF SUPPORT FROM  
ALEJANDRA MARTINEZ**

Dear Judge R. Gary Klausner,

I, Alejandra Martínez have had the pleasure to know José Manuel Pérez for five years. During this length of time José Manuel and I have grown a friendship which has led up to our engagement. José Manuel has been by my side raising my son Mateo Martinez as one of his own, no less than our other four boys; Jr, Manny, Jaime, and Jonathan. He guides him towards the right direction of being kind, respectful and helpful. José Manuel is the type of father and partner who self-sacrifice his sleep when the children are up all night with fevers or upset stomachs. He recognizes when someone is in need and finds a way to help; from pulling over on the side of the road to help push a broken-down car, gifting the sweater he has on his back, to giving his plate to someone who is hungry. José Manuel and I make time and appreciate his grandmother Mama Mari, not only by enjoying her delicious meals but we take her to any doctor appointments necessary, and simply listen to her storytelling.

Without a doubt José Manuel is loving gentle man who put others needs before his own. A hardworking father who shows up no matter how sleep deprived he is; he will make sure you know you are important. I would be happy to tell you many more kind attributes of Jose Manuel Perez if needed, thank you for you time.

Sincerely,



Alejandra Martinez

## **ATTACHMENT “D”: LETTER OF SUPPORT FROM LAURA PANTOJA**

Dear Judge,

I am the mother of Jose Manuel Perez. I just wanted to thank you for taking the time to read this letter and learn a little more about who my son really is. He is a good person and very respectful with others. He is an admirable person who likes to help others. He is always available to help everyone. He is always well behaved and with very good manners.

Anyone you ask will have nothing but good things to say about him. I remember when my dad got sick and we had him in the hospital for almost 3 weeks. It was a very difficult time for everyone especially my children. We lived with my parents for 13 years, my children grew up with them. When my father was hospitalized not a day went by that Jose did not go visit him and he always asked how he could help. Every day my dad got worse but we didn't give up. One day they called the whole family to make a very difficult decision. We had to decide if we were going to continue to give life to my dad or let him go. If we decided to continue, we had to take care of him very carefully because he was going to remain in a vegetable state. My son was the first to tell my mom not to worry that he would find a way to help pay for his required care or he himself would help take care of him. In the end, God decided to take him away, but Jose was still there and helped a lot with his funeral.

Jose loves to help people, even if it means that he is going to go without. He has always had a great passion for animals since he was little. He is very pleased when people want to learn about them or ask him questions. I remember that when people had questions about animals they always came and asked him and he would gladly help them. He had many acquaintances in the pet store industry. José contributes a lot to the family with the support and help he provides. He is well known in the community for the love he has for animals. He is a person who is kind and likes to see everyone improve. He loves to live with his children and nephews and teach them about the animals.

It is not the same as missing one of my children. Christmas wasn't complete without him last year. We all missed him. He is greatly missed by his four children who are growing up and having to adapt without him. The older one has to be responsible for the younger ones because their father is not home. He was always making sure that they had what they needed and was always taking them in outings. The children miss him a lot. Economically they also need him. We help buy what they need and we try to be a part of their lives, but we can't replace their father. Thank you for your consideration.

Kindly

Laura Pantoja